



Immigration Opportunities

H-1B alternatives for employing foreign workers.



WASHINGTON STATE has more than 90,000 jobs with the title of software developer. Yet, each year, Washington public colleges and universities produce only around 9,000 graduates who hold degrees in science, technology, engineering or mathematics (STEM). U.S. employers across all industries are having a difficult time hiring and retaining the workforce they need to be competitive in the marketplace. Consequently, companies are looking to employment-based immigration options to staff their open positions with candidates from other countries.

One of the most popular ways for U.S. companies to employ foreign workers is through the H-1B program. Companies may submit an application to the U.S. Citizenship and Immigration Services (USCIS) for a candidate to assume a position that requires at least a bachelor's degree. Though many U.S. employers rely on the H-1B program, it has become notorious for its uncertainty. There are only 85,000 new H-1B visas available each year, but that has proven to be insufficient.

One of the most popular ways for U.S. companies to employ foreign workers is through the H-1B program.

This year, applications could not be submitted before April 2. USCIS reached the congressionally mandated cap of 85,000 on April 6. More than 190,000 H-1B applications were filed during those five days, more than two times the amount of H-1Bs available. Therefore, USCIS will implement a lottery to choose which 85,000 of the 190,000 applications (44.7 percent) will be reviewed and, ideally, approved. In past years, the odds of making it into the lottery were even slimmer.

Since so many H-1B applications are not selected in the lottery, companies must assess other options to employ foreign workers.

- **OPT:** Optional Practical Training (OPT) authorizes foreign students to work for one year (or three years with a STEM degree) after graduating from a U.S. university. Many H-1B applications are filed on behalf of individuals who already have OPT work authorization available. However, if the foreign worker is not a U.S. student, or has no OPT time left, the employer should determine if certain country-specific options are available.

- **TN:** Canadians and Mexicans may work in the U.S. in Trade

NAFTA (TN) status in certain positions listed in the North American Free Trade Agreement. Many popular H-1B positions, including engineers, architects and computer systems analysts, are also available under NAFTA.

- **E-3:** Australians may work in the U.S. in E-3 status. The criteria are very similar to H-1B employment, yet the annual cap on E-3s (10,500) has never been reached.

- **H-1B1:** Singaporeans and Chileans may also benefit from an employer-sponsored application. The criteria for H-1B1 employment are identical to H-1B employment, and the annual cap (5,400 for Singapore and 1,400 for Chile) has also never been reached.

- **O-1:** Foreign workers with "extraordinary ability" in the sciences, arts, education, business or athletics from any country may be eligible for O-1 status; however, USCIS applies heightened scrutiny to these applications.

- **L-1:** If a U.S. employer has an affiliate company outside the country, an L-1 intra-company employee may work in the United States if that employee first works at the foreign affiliate for at least one year.

Companies can get very creative when developing strategies to employ foreign workers. Green card applications are an increasingly popular way to avoid H-1B uncertainty and to secure long-term work authorization sooner. Still, all of these options have specific requirements and roadblocks.

Each year, the current immigration laws leave thousands of job candidates without employment authorization and hundreds of employers in need of a workforce. Employers hope that Congress will raise the H-1B cap to a number that reflects the actual need. Until then, companies must work with immigration counsel and spend additional time developing innovative methods to meet rising staffing demands.

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